IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11/10/2004

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.NO.12250 OF 2004

Valliammal Society
68, Thambiah Road
West Mambalam
Chennai 33
rep by its Chairman
T.R.Pachamuthu .. Petitioner

-vs-

1. The State of Tamil Nadu,
rep.by its Secretary,
Housing and Urban Development Dept.,
Fort St. George, Chennai-600 009.

2. The Special Tahsildar (Land Acquisition)
Tamil Nadu Housing Board Scheme
Nandanam, Chennai 35.

3. The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai 35. .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus as stated therein.

For petitioner :: Mr.G.Masilamani, S.C.
for Mr. R.Sundar

For respondents :: Mr. D.Veerasekaran

:ORDERS

The prayer in the writ petition is to issue a Writ of Mandamus forbearing the respondents from dispossessing the petitioner without due process of law in respect of the petitioner's land bearing Survey Bno.134/1, Ramapuram Village, Ambatur Taluk, Tiruvallur District.

2. The petitioner, which is a Society registered under the Tamil Nadu Societies Act 27 of 1975, is running an educational institution for the past 30 years. The predecessor-in-title of the property owned a total

extent of 9.94 acres comprised in S.No.134/1 and few other survey numbers in Ramapuram villages. The respondents sought to acquire the said land and issued a notification u/s.4(1) of Land Acquisition Act on 14.5.1995. It was challenged before the High Court in WP No.527 of 1995. This Court passed an order restraining the respondents therein from dispossessing the petitioners. Pending the writ petition, the Tamil Nadu Housing Board decided to drop the acquisition proceedings in respect of S.No.134/1 - 2.28 acres. But, the Housing Board expressed its inability to complete the legal formalities in view of the pendency of the writ petition filed by the original land owner. Therefore, the land owner withdrew the writ petition to facilitate the respondents to complete the legal formalities of dropping the acquisition proceedings. It is also learnt that the Housing Board has submitted a proposal for issuance of necessary orders for withdrawal of the acquisition proceedings with respect to S.No.134/1 by publication of notification cancelling the acquisition proceedings. Since then, they are approaching the Government to complete the formalities to drop the land acquisition proceedings. Under those circumstances, in the year 1996, the petitioner herein purchased that land. So far no action has been taken to exclude the said land from acquisition proceedings. It is also learnt that the respondents have dropped acquisition proceedings for some other similarly placed persons. While so, the respondents are now trying to dispossess the petitioner from the land they have purchased. The petitioner invested a huge sums of money in the land believing the promise given by the respondents that the acquisition proceedings would be dropped. Therefore, they cannot go back on the promise and dispossess the petitioner.

3. In the counter affidavit filed by the Housing Board it is stated that an extent of 338.28 acres of land including S.No.134/1 was acquired and notification under Section 4(1) of the Act was approved by the Government on 14.5.1975, and the same was published in the Government Gazette on 11.6.1975; enquiry under Section 5-A and Award enquiry under Section 6 were conducted by the Land Acquisition Officers and an award has been passed on 25.11.1994. The land in S.No.134/1 was handed over to the Tamil Nadu Housing Board on 13.3.1995 by the Land Acquisition Officer and it is vested with the Tamil Nadu Housing Board since then. The land is located in the heart of the proposed Ramapuram Neighbourhood Scheme and is having approach from the existing adjacent scheme already developed by the Tamil Nadu Housing Board. Hence, the land in S.No.134/1 is essentially required for forming the housing scheme. The former owner Andalammal and others filed WP No.5 27 of 1995 and this Court dismissed the writ petition as withdrawn by Order dated 29.6.1999. It is further stated that the land was developed with water supply and sewage facility and plots were allotted to general public. The petitioner has trespassed into the property in S.No.134/1 and commenced the construction work, which is an illegal act. The petitioner is not the owner of the property; he is not having any right in the land. The award was passed on 25.11.1994 and possession of the land was taken by the Housing Board on 13.5.1995. The writ petitioner purchased the land only in 1996. Once possession is taken, the land vest with the Housing Board and it is free from all encumbrances. The petitioner is a trespasser and he has no right whatsoever in the land. This land is essentially required for the Housing Board as access from neighbourhood scheme.

4. Mr. G.Masilamani, learned Senior Counsel, appearing for the petitioner submitted that though the land was sought to be acquired and notification was issued under Section 4(1), the land owner filed a petition to the Government to exclude the area from land acquisition proceedings. During the pendency of the proceedings, the Housing Board also recommended for withdrawal of the property from acquisition proceedings. Only on that understanding, the writ petition was withdrawn. Even thereafter, the Housing Board has recommended for the exclusion; but the Government had not passed any orders. While so, the original owner sold the property in the year 1996 to the writ petitioner. After purchase, the writ petitioner evicted many hut dwellers, who held the land and put up a construction to an extent of 50,000 sq.ft. Even assuming for the sake of argument th at the petitioner is a trespasser, still, without notice, it cannot be evicted. In support of his argument, the learned Senior Counsel relied upon the judgment of this Court in ARUNAGIRI v.. THE DIVISIONAL ENGINEER, NATIONAL HIGHWAYS, THIRUVANNAMALAI [1999 Writ LR 175]. In that case, the Division Bench of this Court has held that notice under Section 7 of the Tamil Nadu Land Encroachments Act (1905) is mandatory for taking action under Section 6 of the Act for eviction of the unauthorised occupants/encroachers from the land. The Authorities cannot take action against the trespassers to demolish their houses without issuing notice under Section 7 of the Act, so as to pass an order under Section 6 of the Act to evict them or to demolish their houses. They can evict such trespassers only by following the procedures contemplated under the provisions of the Tamil Nadu Land Encroachments Act.

5. The learned counsel appearing for the Housing Board submitted that Sec.4(1) Notification was issued on 14.5.1975, Sec.5 Enquiry was conducted on 11.6.1975; Award was passed on 25.11.1994, and possession was taken by the Housing Board on 13.3.1995. After the procedures were completed, the writ petitioner purchased the property in the year 1996. The award amount has also been deposited into the Court. Under those circumstances, the petitioner is not entitle for any notice as he does not get any title or interest over the property. Therefore, the writ petition is liable to be dismissed. In support of his contention, the learned counsel referred to the judgment of the Supreme Court in U.P.JAL NIGAM v.. KALRA PROPERTIES (P) LTD. [1996 (II) CTC 60]. In that case, the Supreme Court has considered the right and locus standi of the purchaser after publication of notification under Section 4(1). The Supreme Court has held that the purchaser of the land after publication of 4(1) notification cannot challenge the validity of 4(1) Notification or regularity of taking possession of the land before publication or declaration under Section 6. Such purchaser steps into the shoes of the erstwhile owner and he is entitled to claim compensation to which the original owner is entitled and such lands vested with State are free from all encumbrances once possession is taken. The State cannot be divested of acquired lands unless notification withdrawing land from acquisition issued under Section 48(1) of the Land Acquisition Act is published in the Gazette. Therefore, the learned counsel submitted the provisions of the Tamil Nadu Land Encroachments Act has no application.

6. In the typed set of papers filed along with the writ petition the Order passed in WP No.527/1995 is also found. That shows that WP

No.527/95 was dismissed as withdrawn by Order dated 29.6.1999. In the typed set, the affidavit filed in the writ petition is not filed. The learned counsel for the Housing Board had filed the Order dated 28.3.1994 passed in WP No.499 of 1986 filed by the original owner (G. Andalammal). In that writ petition, the acquisition of land in S.No.134 /1 had been challenged and ultimately the contention of the writ petitioner was rejected and the writ petition was dismissed. Therefore, it appears that W.P.No.527 of 1995 was the second petition. This petitioner has purchased the land after the dismissal of WP No.499/1986. The petitioner has purchased the land only in 1996. That is, the petitioner purchased the land which was already acquired and vested in the Government. Under those circumstances, the purchaser of the land can, at the most, get into the shoes of the original owner as per the judgment of the Supreme Court, referred above. Therefore, this petitioner has the right only to get compensation that is deposited into the Court.

7. The learned Senior Court Mr. Masilamani submitted that the petitioner's right cannot be worser than a trespasser. Even, the trespasser cannot be thrown out without prior notice. Therefore, this petitioner is entitled for notice under Section 7 of the Tamil Nadu Land Encroachment Act.

8. The argument of the learned Senior counsel is not acceptable. The petitioner is claiming ownership of the land as a purchaser and not mere possessory right as a trespasser. The petitioner claims possession in pursuance of the alleged purchase of the land from the original owner. Therefore, it is not a "trespasser". The petitioner is deemed to be holding the property on behalf of the owner of the land. Under those circumstances, notice issued to the original owner during the proceedings under Sections 5 and 6 of the Land Acquisition Act is notice to the petitioner. By purchasing the land after the notification under Section 4(1) of the Land Acquisition Act, the petitioner got only that right of the owner as on the date of such purchase. Therefore, he is not entitled for any notice under Section 7 of the Tamil Nadu Land Encroachment Act. The Tamil Nadu Land Encroachment Act Act has no application to the facts of the present case. In as much as the writ petitioner is in occupation of the land, and it claims possession through the original owner as the purchaser from the original owner after the acquisition proceedings were over, the petitioner is not a trespasser simpliciter. There was never an animus to trespass. Hence, the petitioner is not entitled for any notice under any of the Acts. The right or interest of the petitioner over the land is nothing more than that of the original owner of the property.
9. In the result, the writ petition is dismissed. No costs.
Index: Yes
Internet: Yes
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To

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State of Tamil Nadu
Housing and Urban Development Dept.,
Fort St. George, Chennai-600 009.

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